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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial Number: 09/849,315

Atty Docket 4025

Filing Date: May 7, 2001

Art Unit 1772

Inventor: Joseph J. Solon

Examiner Alexander S. Thomas

For: Environmentally Safe Method and Apparatus for Storage of Discarded Tire Rubber

Re: DECLARATION UNDER 37 CFR 1.132 TRAVERSING THE
EXAMINER'S REJECTION GROUNDS

Now comes the below identified declarant stating the following under declaration.

My name and address is as follows:

Joseph M. Solon
288 Summerhaven Dr.
East Syracuse, N. Y. 13057

I have worked with the reclaiming of abandoned tire carcasses and producing marketable products therefrom in the employment of the Interstate Recycling Corp. for three years.

I have reviewed the Miller reference 5,472,750 and the Pignataro, Jr. reference 5,834,083.

Also I have reviewed the rejection ground of the Examiner in the Final rejection of Oct. 30, 2002 considering the merits of the Examiner's conclusion that "Miller - - would inherently prevent the accumulation of water; see column 4, lines 57-62". I disagree with his conclusion based upon the following facts:

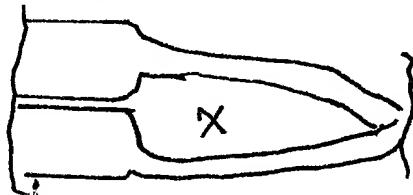
From col. 3, lines 40-46, the Miller invention disclosure explicitly precludes the removal and discarding of the sidewall layer portions before forming a piled bundle of layers, and thus

cannot make obvious the claimed patent feature in that the sidewalls are removed from the tire carcass to form substantially flat tread portions cut from the tire carcass crown to form layers piled up into stacks in compact rubber-to-rubber interfacing configurations.

Miller nowhere recognizes or discusses the problem solved by the present invention, namely to prevent retention of water in the bulk storage of tire carcasses. To achieve this objective the different manner of stacking tire tread strips with sidewalls removed is a critical step in avoiding accumulation of water and therefore the breeding grounds for mosquitos in the pile of stacked layers requiring integral sidewalls that is taught by Miller.

Note that in Claim 1, the tread strip layers are defined as substantially flat sections of tire strips, as contrasted to the Miller configurations which necessitate thinner sidewall portions integrally attached to the tire tread portions. This Miller structure prevents Miller's bundles from achieving the Claim 1 feature of "stacking a plurality of the storable sections into said stacks in compact rubber-to-rubber interfacing configurations".

The Miller stacked structure forms the cavities "x" appearing in the following sketch:



In this respect the bundles of Miller Figures 3-5 are misrepresented in that there can be no such configurations without a central thicker portion having gaps between the sidewall and tread portions in the region of transition from thicker tread portions to thinner sidewall portions, which therefore cannot be in compact rubber-to rubber interfacing configurations as claimed. Thus the Miller structure necessitate the creation of internal cavities that have the propensity to retain and

store water serving as mosquito breeding beds when positioned in the outside environment and failing to overcome the serious problem of breeding mosquitos that the present invention avoids.

In this respect I disagree with the Examiner's further conclusion that "Miller clearly discloses stacking the tire mats to form a generally solid form and therefore would inherently prevent the accumulation of water".

As further evidence that inner chambers that collect water are present in the Miller configurations, is the requirement for Miller to flatten the tire carcass mats which do not naturally lie in a flat configuration because of the sidewall structure and the manufactured shape of the tire carcass shoulders firmly retained by memory. This further results in the necessity to bundle the flattened mats together with bands, col. 7, lines 46-49. The tire carcasses made with thick shoulders forming a substantial ninety degree angle vulcanized in manufacture in an integral joint with the very thin sidewall portions are required in Miller. It is impossible to flatten this Miller structure into a flat mat, and in any event the differences of fabric thickness and the memory of the shoulder configuration retained in the tire carcass would cause internal void cavities for accumulating water varying in size depending upon the resiliency of the bundling bands. Thus, Miller's bundles are incapable of eliminating mosquito breeding cavities when stored in the environment (as defined in rejected Claim 9). Applicant by removing the shoulders and sidewalls (Fig.1) provides flat strips that inherently lie flat when stacked "in compact rubber-to-rubber interfacing configuration" and thus preclude the internal mosquito breeding cavities inherent in Miller's bundles having integral sidewalls retained.

I thus come to the conclusion that the present invention and disclosed structure and that of Miller are diverse and mutually exclusive in nature, and that nothing disclosed by Miller suggests

forming bundles of a nature eliminating mosquito breeding grounds when the bundles are stored in an outside environment.

The Examiner concludes that Pignataro, Jr. discloses removing sidewall from the tread prior to shipping in a recycling process. However, the Examiner does not reject the claims on the ground that Pignataro, Jr. teaches how to obtain the claimed invention, namely the removal of mosquito breeding water cavities from tires stored in the environment in a different manner than Miller. Thus, the teachings of Pignataro, Jr. do not teach how to produce the claimed invention, either alone or in combination with Miller.

Note from Pignataro, Jr. col. 1, lines 36-39, that it is acknowledged that rain water will be accumulated in tire carcasses stored in the environment. This in essence is a teaching that contradicts the Examiner's conclusion makes obvious applicant's method of storage of tires in the outside environment in a configuration that precludes the storage of water that forms breeding grounds for mosquitos. That teaching and structure is uniquely applicant's.

While it may be that Pignataro, Jr. makes obvious the removal of sidewalls from the tread, that is acknowledged by applicant's Fig. 1. Pignataro, Jr's objective is to produce products, and does not anywhere refer to any removal procedure for the water retained by stored tire carcasses, as claimed by the applicant. Applicant is not claiming the laying out of flat cuts on a truck storage bed or transporting tire carcasses from a dump site to a central recycling facility, as disclosed by Pignataro, Jr in the paragraph starting on col. 3, line 60.

I therefore reach the conclusion that applicant's invention as defined in the rejected claims 1, 2, 9-11, 13-15, 17 and 24 are not taught by Miller and/or Pagnataro, Jr. either viewed alone or in combination. I am convinced that the elimination of mosquito breeding grounds in dumps for

storing abandoned tire carcasses in the environment is unique to the current invention, and is taught only in the specification of Applicant.

All of the statements made of declarant's own knowledge are true and all statements made on information and belief are believed to be true, and I am warned that willful false statements and the like are punishable by fine or imprisonment or both (18 U.S.C. 1001) and may jeopardize the validity of the application or any patent issuing therefrom.

Executed this ____ day of _____ 2002:

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Executed this 7 day of December 2002:

Joseph M. Solon